

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUN -8 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

In re the Marriage of:)	2 CA-CV 2010-0010
)	DEPARTMENT A
RICHARD A. SWETE,)	
)	<u>MEMORANDUM DECISION</u>
Petitioner/Appellant,)	Not for Publication
)	Rule 28, Rules of Civil
and)	Appellate Procedure
)	
ERIN L. SWETE,)	
)	
Respondent/Appellee.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100DO200801575

Honorable Joseph R. Georgini, Judge

AFFIRMED

Richard A. Swete

Casa Grande
In Propria Persona

Erin L. Swete

Salinas, California
In Propria Persona

K E L L Y, Judge.

¶1 Appellant Richard Swete appeals from the trial court’s order of dissolution of marriage. He maintains the trial court erred in dividing the couple’s property and debts and in awarding spousal maintenance to his former wife, appellee Erin Swete. Finding no error, we affirm.

Background

¶2 Richard and Erin were married in 1994 and have four minor children. The parties agree that in 2007 Richard left the couple’s home in Mississippi and moved to Arizona to take a position with the United States Border Patrol. The couple planned for Erin and the children to move to Arizona as well but, for reasons upon which the parties disagree, they did not. Richard petitioned for dissolution of the marriage in November 2008.

¶3 After a bench trial, the trial court ordered the marriage dissolved, awarded Erin \$500 per month in spousal maintenance for forty months and divided the couple’s assets and debts. It ordered the couple to sell their real property and divide the proceeds equally. It also ruled that Richard was not “entitled to an off-set for amounts paid on” the couple’s Mississippi home while he had been in Arizona during 2008 and 2009. The court awarded Richard two vehicles and his separate property and ordered him to pay certain community debts totaling approximately \$5,500. It awarded Erin her separate property, a vehicle, and the “household furnishings” from the Mississippi home. It ordered Erin to pay other community debts totaling approximately \$940. It also awarded

Erin half of all “Pensions, 401(K) Accounts, [and] applicable Life Insurance Policies.”
This appeal followed.

Discussion

¶4 Preliminarily, the transcripts of the dissolution proceedings have not been made part of the record on appeal. As the appellant, Richard was obligated to “mak[e] certain the record on appeal contains all transcripts or other documents necessary for us to consider the issues raised.” *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995); *see also* Ariz. R. Civ. App. P. 11(b). In the absence of the transcripts, we will presume they support the trial court’s factual findings and rulings, *Kohler v. Kohler*, 211 Ariz. 106, n.1, 118 P.3d 621, 623 n.1 (App. 2005), and we address Richard’s claims accordingly.¹

¶5 Richard first maintains the trial court should not have awarded Erin spousal maintenance and had not been “aware of the complete financial picture of both parties.” “We review the trial court’s award of spousal maintenance for an abuse of discretion.” *Gutierrez v. Gutierrez*, 193 Ariz. 343, ¶ 14, 972 P.2d 676, 681 (App. 1998).

¶6 Section 25-319(A), A.R.S., allows a court to order spousal maintenance for either spouse if it finds that the spouse seeking maintenance:

1. Lacks sufficient property, including property apportioned to the spouse, to provide for that spouse’s reasonable needs.

¹Richard also fails to cite to the record or any relevant legal authority as required by Rule 13(a)(6), Ariz. R. Civ. App. P., and we could dispose of this matter solely on that basis. *See Brown v. U.S. Fid. & Guar. Co.*, 194 Ariz. 85, ¶ 50, 977 P.2d 807, 815 (App. 1998). In our discretion, however, we address Richard’s claims.

2. Is unable to be self-sufficient through appropriate employment . . . or lacks earning ability in the labor market adequate to be self-sufficient.

3. Contributed to the educational opportunities of the other spouse.

4. Had a marriage of long duration and is of an age that may preclude the possibility of gaining employment adequate to be self-sufficient.

¶7 The trial court must also consider numerous other factors in setting the amount and duration of the award, including, inter alia, the supporting spouse's ability to pay, the comparative earning power of the spouses, the duration of the marriage, and the contributions of the supported spouse to the supporting spouse's earning ability. § 25-319(B). Without a transcript of the trial, however, we must assume the evidence presented to the trial court was sufficient to support its findings, *Kohler*, 211 Ariz. 106, n.1, 118 P.3d at 623 n.1, and we therefore cannot say the trial court abused its discretion in awarding Erin spousal maintenance. See *Gutierrez*, 193 Ariz. 343, ¶ 14, 972 P.2d at 681.

¶8 Richard also alleges the trial court improperly divided the couple's community assets and debts because Erin had "made no effort to pay her fair share of the mortgage payments," had received a greater share of the community property, had not been ordered to pay a fair share of the couple's debts, and had not been required to pay any part of the cost of preparing a "Qualified Domestic Relations Order." "The trial court has broad discretion to allocate . . . obligations and its decision will not be disturbed absent a clear abuse of discretion." *Nelson v. Nelson*, 164 Ariz. 135, 138, 791 P.2d 661, 664 (App. 1990). And, although the division of property must be substantially fair it

need not be exactly even. *Miller v. Miller*, 140 Ariz. 520, 522, 683 P.2d 319, 321 (App. 1984) (“Such distribution need not be in kind or exactly equal, but must result in substantial equality.”).

¶9 Again, however, in the absence of a transcript, we must assume the evidence presented to the trial court supported its decision regarding the division of the couple’s property and debts. *Kohler*, 211 Ariz. 106, n.1, 118 P.3d at 623 n.1. We therefore cannot say the trial court abused its discretion in dividing the community assets and debts. *See Nelson*, 164 Ariz. at 138, 791 P.2d at 664.

Disposition

¶10 The judgment of the trial court is affirmed.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Presiding Judge